

APPEAL NO. 041020
FILED JUNE 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 30, 2003. The sole issue before the hearing officer was the respondent's (claimant) impairment rating (IR). The hearing officer in her original decision determined that the claimant's IR is 30% as certified in a Report of Medical Evaluation (TWCC-69) by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appealed the hearing officer's decision. In Texas Workers' Compensation Commission Appeal No. 032336-s, decided October 27, 2003, the Appeals Panel reversed the hearing officer's decision and remanded the case to the hearing officer.

On remand, the hearing officer informed the designated doctor of our decision in Appeal No. 032336-s, *supra*, and the designated doctor then issued an amended TWCC-69 with an explanatory letter certifying that the claimant's IR is 40% under Diagnosis-Related Estimates (DRE) Lumbosacral Category VI of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides 4th edition). The hearing officer sent a copy of the designated doctor's amended TWCC-69 and letter to the parties. A CCH on remand was held on April 7, 2004. In the decision on remand, the hearing officer found that the great weight of the other medical evidence is not contrary to the amended TWCC-69 of the designated doctor and resolved the disputed issue by determining that the claimant's IR is 40% as determined by the designated doctor in his amended TWCC-69. The carrier appealed, contending that it has not been established that the claimant has cauda equina syndrome or that it is part of the compensable injury. The carrier contends that the claimant has a 10% IR based on the report of a peer review doctor who has not examined the claimant. No response was received from the claimant.

DECISION

Affirmed as reformed herein.

In the "Background Information" section of the hearing officer's decision on remand, the hearing officer incorrectly states that the designated doctor assigned the claimant a 40% IR under DRE Lumbosacral Category IV in his amended TWCC-69. The letter the designated doctor sent with his amended TWCC-69 makes clear that he assigned the claimant a 40% IR under DRE Lumbosacral Category VI. We reform the hearing officer's decision to substitute Category VI for Category IV in the decision.

The only disputed issue was the claimant's IR. The Appeals Panel decisions cited by the carrier in its appeal all involved a disputed issue on the extent of the compensable injury. Although in the instant case no disputed issue regarding the extent

of the claimant's injury was before the hearing officer, we believe that the hearing officer has impliedly found that the claimant has cauda equina-like syndrome without bowel or bladder signs as determined by the designated doctor based on his clinical examination of the claimant and has also impliedly found that such syndrome is part of the compensable injury. We believe that to be the case because the designated doctor assigned the claimant a 40% IR for the claimant's compensable injury under DRE Lumbosacral Category VI for cauda equina-like syndrome without bowel or bladder signs, the hearing officer determined that the amended findings of the designated doctor are not contrary to the great weight of the other medical evidence and that the claimant's IR is 40%, and Section 401.011(24) provides that an IR is the percentage of permanent impairment of the whole body resulting from a compensable injury. We note that there is evidence of loss of lower extremity function bilaterally in the reports of the designated doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision on remand that the claimant's IR is 40% is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge